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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 002858

SIPDIS

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SUBJECT: ITG FACES STEEP LEARNING CURVE ON DETENTION  
TRANSITION PROPOSAL

Classified By: Classified by Acting Political-Military  
Counselor Evan Reade for Reasons 1.4 (b) and (d)

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SUMMARY

1. (C) ITG detainee-transition point-of-contact Sharwan al-Waely met with Embassy and MNF-I representatives on June 5, 2005 to discuss ITG legal authorities to conduct security detentions (see reftel). The conversation with al-Waely indicated that the ITG, despite the USG's repeated briefings to senior leadership, is unfamiliar with the scale, legal basis, and procedures of current Coalition detention operations, and thus faces a steep learning curve on this issue.

2. (C) Al-Waely did not appear ready to concede that security detentions (by MNF-I or, potentially, by the Iraqi government) play a necessary role in fighting the insurgency. In our second meeting, to be held July 11, we plan to present a briefing on the demographics of and the security threat posed by the Coalition-held detainee population. We will re-focus discussion on Iraq's legal authorities at a third meeting provisionally scheduled for July 18.

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BACKGROUND

3. (C) In reftel, the Department requested that the Embassy initiate discussions with the ITG to determine the legal basis for the ITG to play a greater role in detention operations in 2005 and beyond. On May 28, the Charge d'Affaires raised this issue with PM Ja'afari; on several other occasions, PolMilCouns and MNF-I raised the issue informally with the PM.

4. (C) In response, on June 8, the PM's spokesman, Laith Kubba, informed PolMilCouns that the PM had designated Da'wa party member and TNA representative Sharwan al-Waely (also a member of the Constitutional Committee) as the ITG point of contact for this issue. We attempted to contact Mr. al-Waely immediately; however, he initially was unresponsive, and later left the country for ten days. On his return, we set up a July 5 meeting.

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JULY 5 DISCUSSIONS

5. (C) Representatives of MNF-I Detainee Operations and Embassy Legal and Pol-Mil held their first meeting with Mr. al-Waely at the Baghdad Convention Center on July 5, 2005. Mr. al-Waely attended the meeting alone, but indicated that he intends to increase the size of the ITG delegation for our next scheduled discussion. He mentioned that he would assemble individuals who deal with legal, security, and political issues.

6. (C) Mr. al-Waely opened the meeting by noting that he was a lawyer as well as a TNA member; that the Prime Minister had authorized him to be in charge of this issue; and that he had headed a similar committee on Sadr detainees before the ITG was formed. He quickly noted that detention operations were a sensitive issue "after the events of Abu Ghraib and Camp Bucca," and in view of recent accusations about abuses by the Ministry of Interior.

7. (C) He also requested that MNF-I present him with a list of all detainees in Coalition custody, indexed with each detainee's status before the Combined Review and Release Board (CRRB) and/or Central Criminal Court of Iraq (CCCI), to enable him to answer inquiries from "people missing loved ones."

8. (C) (NOTE: MNF-I provides this list every thirty days to the Iraqi Ministry of Justice on CD-ROM; the fact that PM Ja'afari's aide Bashar al-Naher also

asked recently for the same list, equally unaware that the ITG already had a copy, is indicative of the apparent lack of information-sharing on Coalition detention issues within the ITG.)

¶9. (C) Mr. al-Waely posed a number of questions, apparently based on his impression that the size of the current detainee population was related to bureaucratic or otherwise unreasonable delays in detainee releases. It was, he suggested, a violation of detainees' human rights to hold them for lengthy periods pending trial if the delay were due to the under-capacity of the Iraqi court or prison systems.

¶10. (C) At one point, Mr. al-Waely asked for the names of the CRRB members and appeared to be interested in a bulk release of detainees held in temporary divisional facilities to create political capital. (PolMilOff explained that MNF-I does not "store up" these detainees for release, but rather releases them on a rolling basis, as and when it is determined that they do not pose an imperative threat to security.)

¶11. (C) Embassy Legal raised the impending need to consider how to deal with high-threat detainees who could not be prosecuted criminally but who Iraq and the Coalition would not want to see released when UNSCR 1546 authorities expire. Mr. al-Waely was dismissive, saying that detainees were innocent until proven guilty, and that Iraqi law did not permit internment other than short periods of judicial detention pending court investigation.

¶12. (C) Embassy Legal discussed the international practice of security internment, noting the existence in UK and Indian law of such emergency authorities, as well as the fact that those authorities provide a number of safeguards against arbitrary or unreviewed detentions. Embassy Pol-MilOff offered concrete examples of high-risk security internees whose release would pose a significant threat to Iraqi security, especially if large numbers of releases were to occur simultaneously upon the expiration of UNSCR 1546.

¶13. (C) In response, Mr. al-Waely noted that this was "beautiful talk," but invited the USG delegation to look at it from a politician's point of view. Media reports and investigations of abuses committed at Abu Ghraib, and "illegal things Coalition Forces are doing" elsewhere had made detention problematic "in the hearts and minds of Iraqis."

¶14. (C) Mr. al-Waely commented that while he realized there were many hardened criminals in the Coalition detainee population, there were also many who were innocent; some, he claimed, had been falsely accused or reported to MNF-I by their Iraqi neighbors. "That's why we need to put some sort of less complicated system in place," he said.

¶15. (C) Mr. al-Waely suggested that individual voting members of the CRRB attend the next meeting, apparently with an eye to discussing the members' (confidential) retain-or-release votes. MNF-I and EmbOffssuggested that Mr. al-Waely contact the Deputy Ministers at the Board's ministerial components (Interior, Justice, and Human Rights) instead.

¶16. (C) In closing, Legal noted that the issue of high-threat security internees and their post-UNHCR-1546 status was a critical issue for both Iraq and the Coalition, and that it was important for discussions to begin earlier rather than later. Somewhat surprisingly, Mr. al-Waely agreed with this statement, noting that the problem was one for both Iraq and the United States.

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WAY AHEAD  
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¶16. (C) At our second meeting, scheduled for July 11, EmbOffs and MNF-I intend to brief an expanded Iraqi delegation on the size, characteristics, and threat level of the MNF-I detainee population, as well as on current Coalition legal authorities and procedural processes, with the intent of creating a common starting-place for our discussion of current (and possibly future) Iraqi legal authorities.

¶17. (C) At our third meeting, scheduled to take place on July 18, we hope to return to the issue of current and potential Iraqi authority to detain security internees. We will report the results of each meeting.

